

**WORKERS' COMPENSATION ADVISORY COUNCIL**

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**MINUTES ~ JULY 8, 1999 MEETING [1:00 P.M.]  
710 JAMES ROBERTSON PARKWAY  
HEARING ROOM, FIRST FLOOR  
ANDREW JOHNSON TOWER  
NASHVILLE, TENNESSEE**

The meeting was called to order by Mr. Dale Sims, there being a quorum present.

Voting members in attendance:

Mr. Jack Gatlin  
Mr. James G. Neeley  
Mr. Bob Pitts  
Mr. Othal Smith, Jr. [by proxy to Mr. Neeley]  
Mr. Steve Turner  
Mr. Carter Witt

Nonvoting members in attendance:

Ronald Bingham, M.D.  
Ms. Jacqueline B. Dixon  
Mr. Tony Farmer [by telephone conference call]  
Ms. Abbie Hudgens  
Mr. Jerry Mayo

Ex officio members in attendance:

Ms. Sue Ann Head, Assistant Commissioner, Department of Labor and Workforce  
Development [designee for Commissioner Michael E. Magill]  
Mr. Neil Nevins, Assistant Commissioner, Department of Commerce and Insurance  
[designee for Commissioner Doug Sizemore]

Also present:

M. Linda Hughes, Executive Director

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The minutes of the April 9, 1999, Workers' Compensation Advisory Council meeting were unanimously approved as amended for typographical corrections. Mr. Sims welcomed Mr. Steve Turner, Speaker Naifeh's appointment to the Advisory Council to replace Ms. Corder, and also noted Dr. Ronald Bingham had been reappointed by Governor Sundquist as the health care provider representative.

## **NEW BUSINESS**

### **A. DISCUSSION OF DEVELOPMENT PLAN FOR ASSIGNED RISK PLAN REPORT DUE TO GENERAL ASSEMBLY BY JANUARY 15, 2000.**

Mr. Sims requested the Executive Director to discuss the first item of business. Ms. Hughes noted the Advisory Council is required by statute to report to the General Assembly by January 15, 2000, on issues related to the assigned risk pool and is required to make specific recommendations concerning direct assignment of insurance and a competitive state workers' compensation insurance fund. The assigned risk plan statute [TCA 50-5-314] requires the Commissioner of Commerce and Insurance to activate the competitive state insurance fund or implement a plan of direct assignment if the assigned risk plan is not less than 10%.

A discussion ensued as to the manner by which the information can be gathered to develop a comprehensive report to the General Assembly. Mr. Witt noted the evaluation of the assigned risk plan is tied to an evaluation of the loss cost system, about which the Advisory Council is to report to the General Assembly in January, 2001, and that it might be appropriate for the Advisory Council to tie the two reports together.

After further discussion, the Advisory Council decided to request the Department of Commerce & Insurance, the NCCI and AON to present written reports to the Advisory Council which would include: historical background of assigned risk plan since 1992; observations concerning past, present, and future effectiveness of the assigned risk plan; evaluation of any changes or modifications which the entity feels should or should not be continued; and an appropriate sunset date, if any. In addition, it was decided to invite the following entities to submit written reports if they desired to do so: Tennessee Association of Professional Insurance Agents, Insurors of Tennessee; American Insurance Association and the Alliance of American Insurers. The written reports are to be submitted by August 10, 1999, to enable the Advisory Council members to review them prior to the August 26, 1999, meeting. The Advisory Council also requested the Department of Commerce and Insurance to present an oral report at the August 26, 1999, meeting to address issues related to the evaluation of the loss cost system and its impact on the assigned risk plan.

The Advisory Council then discussed the procedural options for preparation of the assigned risk plan report. It was decided the Executive Committee would meet to develop an initial draft report, with an open invitation to any member to participate in the process. As the written reports will be available by the August 26, 1999, meeting, it was determined the Executive Committee should meet shortly thereafter to prepare a rough draft of the report to be available at the September 23, 1999, meeting, with the final draft completed and ready for approval at the November meeting.

**B. DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT REPORT**

Ms. Sue Ann Head, Assistant Commissioner, introduced Mr. Jim Farmer, Director of the Division of Workers' Compensation, to respond to the Advisory Council's request for status reports on the following issues: *[A written report was also submitted by the Department and distributed to each member at the meeting.]*

**1. Status of Computer System**

Mr. Farmer reported all design work on the new computer system has been completed and at 4:30 p.m. on July 7. The old system was shut down and at that time the process of conversion of the data into the new system began. The Department anticipates the new system will be in place on Monday, July 12, 1999.

Mr. Farmer also reported the Department is in the process of implementing an imaging system to replace the current microfilm system. A contract has been signed by the proposed vendor and currently being reviewed by the appropriate divisions of the State with an anticipated purchase order approval by the end of July. The Department intends the imaging system to be integrated with the computer system to eliminate as much paper as possible. He also reported the Department is making plans to obtain as much data as possible electronically. The Department hopes to have an EDI [electronic data interchange] pilot project in place with at least one trading partner by February, 2000, to file claims forms [including the first report of injury] and coverage forms electronically.

**2. Status of Statistical Data Form**

Schedule for input of data: The Department began accepting the form November 1, 1998. Several hundred forms have been input into a personal computer which will be converted into the new computer system. Mr. Farmer reported the Department anticipates beginning data entry of the remaining forms into the new system the week of July 12. As these forms are entered, the data will be capable of being utilized for analysis.

Anticipated changes to form: With regard to anticipated changes to the SD1 form, Mr. Farmer stated the Division does not have any proposed changes to the form. A request has been received from the court clerks for a blank area on the form to allow them to stamp it with the date of filing. Because of the inability to input all of the received forms into a computer system, the Department has been unable to look at the forms in any analytical way to determine what changes may be necessary. As the form was promulgated by rules/regulations, the Department will have to undergo a rules revision process in order to change the form and the Advisory Council will be requested to review any changes.

Plan to assure compliance: Mr. Farmer prefaced his remarks by reporting to Advisory Council that through the end of business of July 7, the Department had received 8,342 SD1 forms. A random sampling of the forms performed by him revealed approximately 60% were "fully complete" while 40% were not. In response to an inquiry from Mr. Pitts, Mr. Farmer stated there are no specific categories that were consistently not completed, but rather they varied from form to form.

Mr. Farmer expressed concern that although the law states a court order or Department approval is not final until the SD1 is fully completed and filed with the court or received by the Department, there are no monetary fines or penalties attached to the failure to provide complete information. The Department believes the only avenue currently available to it to assure compliance is to send a letter to the parties advising them the order or approval is not final and binding until the Department receives the completed information. The Department intends to request the missing information and to continue advising the parties the order/approval is not final at thirty day intervals. After the third attempt to obtain the information, the Commissioner will be requested to initiate the process to suspend the license of the insurance company until the information is received. In response to an inquiry by Mr. Mayo, Mr. Farmer indicated it is the intention of the Department to follow this procedure for all the 8,000 forms already received by the Department as they are entered into the new computer system.

Mr. Neeley expressed concern about the lack of a mechanism in the statute to assure compliance. Mr. Pitts inquired as to whether it would be worthwhile to again communicate to the insurance companies why completing the SD1 is of importance and to reaffirm that cases are not closed until the form is fully complete.

Educational Process: Mr. Farmer stated as a part of the educational process, the Department has sent mailings and made presentations concerning the SD1. The Department intends to continue to notify the parties through mailings, group meetings, seminars and the educational conference that the SD1 is reality and why it is in their best interest to provide the information.

Ms. Head noted Commissioner Magill will be inviting insurance companies, third party administrators and self-insured employers to a meeting to discuss the new computer system as the SD1 is not the only area in which there are problems with compliance. While the new computer system is primarily designed to generate information, statistics and data, it also is a tracking system for compliance and the majority of the violations carry monetary penalties. The new computer system will automatically notify insurance companies, third party administrators and self-insured employers of failure to timely file the required reports and will compute, assess and accumulate the related penalties until compliance is obtained. The Department anticipates a limited grace period before the fines and penalties will be assessed.

### **3. Update of Second Injury Fund/Settlement Authority Pilot Proposal**

Mr. Mark Reineke, general counsel for the Department, reported he has prepared a proposal which should be finalized by the end of the week of July 12 after input from Commissioner Magill and Assistant Commissioner Head. He stated a meeting of the appropriate parties from the Governor, Treasurer and Attorney General's offices is anticipated by the end of July to finalize the proposal.

The proposal anticipates giving the attorneys representing the Second Injury Fund limited authority [up to a specific, currently undetermined, amount] to settle the cases and allow the attorneys to be more proactive in Second Injury Fund cases. Mr. Mayo asked whether a copy of the proposal would be provided to the Advisory Council. Mr. Reineke indicated he should have the proposal in the hands of the Advisory Council subcommittee by the August meeting of the Advisory Council.

### **4. Settlement Approval Process [Additional Requested Information]**

Mr. Farmer supplied additional information for those cases in which settlements had been approved by the Department in which medical expenses had been left open for more than three years. He reported there were only six cases which met this criteria. Of these six cases, three of the employees were represented by counsel; all six employers were represented by counsel. The attorneys were all different in the six cases. All six cases were approved by six different specialists; two of the cases were approved in Kingsport, and one each in Knoxville, Chattanooga, Jackson and Memphis. Additional information on each of the cases was included in the written report distributed to the Advisory Council.

Mr. Neeley expressed his continued concern with the settlement of future medical expenses which by statute is a lifetime benefit. He recognized closing medical expenses is a part of the negotiating process, but questioned whether there is medical proof to support closing the medical. Dr. Bingham noted in cases in which the employer agrees to pay medical expenses after the first \$1000 [which amount had been paid to the employee at the time of settlement] creates a negative incentive to seek medical care - it discourages the injured worker from seeking additional care because the first \$1000 has to be paid by the employee.

Mr. Neeley stated his opinion that the settlement of the future medical component violates the intent of the lifetime medical statute and he would like the issue to be closely monitored in the future. Mr. Farmer indicated the Department intends to monitor this very closely. Mr. Farmer stated the Department is in a "Catch 22" position because closing medical benefits has become a part of the mediation and negotiation process and whether it should be or not is a philosophical or political question that may require legislation to change. Mr. Farmer noted some injuries are such that they will never require future medical expenses. Ms. Head also pointed out that often if an employee has lifetime benefits for an injury but becomes employed by another employer and the old injury begins

to cause problems, the employee will experience major problems with the insurance companies as to whether it is a new or old injury or whether it is an aggravation. It is often easier for that employee to take cash and close out the claim and to file a new claim when the benefits are higher.

## **5. Update on Claims Handling Standards**

Mr. Farmer stated he does not know what the impact of the claims handling standards have been to date because the Department's old computer system would not allow the Department to analyze the impact. It has appeared, although not capable of substantiation or proof, the number of calls from employees complaining of insurance companies' practices has declined.

Mr. Farmer manually pulled a random selection of first report of injuries received in 1999, and the review of these forms revealed a concern because 80% were not received within the time allowed by the claims handling standards. The average length of time from date of injury until the form was received by the Department was 92.7 days. Half of the forms were received before 40 days and half of them were received after 40 days. A significant number of the first report of injury forms were neither signed by the employee nor explanation given as to why the form was not signed. He stated the Department has some work to do in the educational process with the claims handling standards. Beginning at the end of the grace period, notices will be sent when forms are not received timely and fines/penalties assessed.

Mr. Farmer reported that with regard to the problems experienced or identified concerning the claims handling standards, a large number of the required forms are not being fully completed. Under the new computer system, all the information on every form will be captured and all missing information will generate a written request for submission of the missing data.

Mr. Farmer brought to the Advisory Council's attention a possible discrepancy between the claims handling standards [which requires a decision on compensability within 15 days] and *TCA 5-6-118(a)(5)* [which appears to give the employer 90 days within which to determine compensability]. He noted another area of possible conflict related to *TCA 50-6-413* which requires every insurance carrier to have a claims office within the borders of Tennessee or to contract with a claims adjuster to handle the claims. In some instances the insurance company contracts with a law firm to represent the carrier in a benefit review conference and to settle the claim, but the claim is actually handled in another state. Mr. Farmer stated he did not know if this is a conflict but noted it because it relates to claims handling and, therefore, to claims handling standards. The term "claims adjuster" is not defined in the law.

Mr. Neeley expressed his opinion that if the claims handling standards do not coincide with law there need to be additional rules promulgated to assure the intent of the law is carried out. Mr. Nevins stated the Department of Commerce and Insurance was of the opinion that, at one point in time, it was the Department of Labor's position that as long as there was an individual within Tennessee with the authority to commence benefits, the fact that the actual check was written or

processed out of state technically met the requirements of the law. Ms. Head stated the Department of Labor has been operating with the assumption there must be someone in the state who can handle benefits, initiate payments and someone for the Department to contact in case of a dispute, without going out of state.

Mr. Mayo suggested if those who are administering the law are unclear whether or not it is being administered properly or not, they should obtain clarification as to what the law is actually supposed to do before making suppositions as to how it is supposed to be applied. He stated if the Department of Labor does not know whether a situation does or does not comply with the law which they have to administer, it behooves them to seek clarification. Mr. Turner indicated if the intent was to improve service to the citizens the physical place where the check is written is not important.

Mr. Sims agreed that what is important is a having a claims person who is responsive, who can move a case along, and who can be present at benefit review conferences with settlement authority. The focus should be the customer service or the claims process and to force the claims person to adhere to the claims handling standards and time limits contained therein. It was his opinion that if this is the focus, the geographic implications go away. He urged the Department, as it looks at these issues, to be goal oriented. He suggested the requirement of more stricter standards, if necessary, to assure both the employee and employer are treated fairly rather than requiring the claims adjuster be present within the state. He indicated if there is concern the adjuster be familiar with Tennessee law, then the Advisory Council may wish to address the issue of licensure of adjusters.

### **C. EXECUTIVE DIRECTOR REPORT**

Ms. Hughes pointed out the materials distributed to each member included a document listing all workers' compensation legislation introduced in 1999 and its current status. She also discussed the legislation which was enacted in 1999 and noted a copy of each public chapter was included in the distributed materials. She reviewed the changes in the enacted statutes which differed from the versions of the proposed bills which had been reviewed by the Advisory Council. A copy of the budget report of the Advisory Council for the third quarter of fiscal year 1998-99 was also distributed to each member.

Ms. Hughes reminded the members of the meeting dates in August [the 26th at 1:00 p.m.] and September [the 23rd at 1:00 p.m.]. The November meeting date was changed from the 18th to Tuesday, November 9 at 10:00 a.m.

The meeting was adjourned at 2:55 p.m.